IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 218 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
HANSRAJ JERAM @ DHARAMSHI & 1 - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 14.09.1992 passed by the learned Civil Judge (J.D.) & Judicial Magistrate, First Class, Bhavnagar in Criminal Case No. 2711 of 1991 whereby, the respondents – accused persons were

acquitted of the charges levelled against them.

2.0 The brief facts of the prosecution case are as under;

2.1 On 25.12.1990, at around 2030 hrs., the respondents – accused persons were caught red-handed while committing theft in a residential house situated in New Anandnagar area of Bhavnagar District. A complaint for offences punishable u/s. 454, 457 and 380 of the Indian Penal Code came to be filed against them before 'B' Division Police Station, Bhavnagar.

2.2 Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the respondents, they came to be arrested and charge-sheet was filed against them. Charge was framed against them and as the accused pleaded not guilty to the said charges, trial was conducted against them.

2.3 In order to prove the guilt against the accused persons, the prosecution has examined one Bakulesh Naradlal at Exhibit – 11 and has also relied upon the documentary evidence in the form of complaint at Exhibit – 12. At the end of trial, as no cogent evidence was available against the respondents, the trial Court acquitted them of the charges levelled against them. Hence, the present appeal.

3.0 Heard learned counsel for the respective parties and

perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances,

> to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 Having gone through the impugned judgment and order, it appears that the trial Court has acquitted the respondents mainly on the ground that no evidence was available against them. While doing so the trial Court has also dealt with the Exhibit – 10 '*purshis* ' submitted by respondent no. 1 – accused whereby, he had admitted his guilt. However, the same was not considered by the trial Court in view of the decision of this Court in the case of ***State of Gujarat v. Dalpatsinh Bhagwansinh Dodiya*** reported in ***1992 (2) G.L.H. 10*** wherein, it has been held that the stage of convicting the accused on his plea of guilty is when the charge is read over to him. Plea of guilty, at a later stage, cannot be accepted and the Court has to decide on recording and appreciating the evidence available on record. Relying on the principle laid down in the said decision of this Court, the trial Court

did not consider the Exhibit – 10 '*purshis* ' filed by respondent no. 1 - accused during the course of trail and, ultimately, acquitted both the respondents on the ground of lack of evidence against them.

7.0 Considering the facts referred to hereinabove, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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